

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeenn G. Kelly.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER04-691-066

Public Utilities With Grandfathered Agreements
in the Midwest ISO Region

Docket No. EL04-104-062

ORDER ON COMPLIANCE FILING

(Issued March 3, 2006)

1. On August 6, 2004, the Commission approved the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Transmission and Energy Markets Tariff (TEMT) under which the Midwest ISO has initiated Day 2 operations in its fifteen state region.¹ The Midwest ISO's Day 2 operations include, among other things, day-ahead and real-time energy markets and a Financial Transmission Rights (FTR) market for transmission capacity. The Order on Rehearing I required the Midwest ISO to make several compliance filings to implement various Commission directives. Compliance Order III addressed, among other things, the Midwest ISO and its Independent Market Monitor's (IMM) January 7, 2005 filings to comply with those various directives.
2. On October 24, 2005, the Commission issued an order² that accepted in part and rejected in part the January 7, 2005 compliance filings. In the instant order, we will conditionally accept the revisions to the TEMT proposed by the Midwest ISO in its

¹ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (August 6 Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004) (Order on Rehearing I), *order on reh'g*, 111 FERC ¶ 61,043 (2005) (Compliance Order III), *reh'g denied*, 112 FERC ¶ 61,086 (2005).

² *Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,083 (2005) (October 24 Order).

subsequent November 23, 2005 compliance filing (November 23 filing) to comply with the October 24 Order, and require that the Midwest ISO make a further compliance filing with the Commission.

I. The November 23 Filing

3. The Midwest ISO's November 23 filing, filed in response to the October 24 Order, includes a revised definition for "system purchase contracts" in the TEMT and several revisions to Module D of the TEMT, including revisions to the monitoring plan required to detect inefficient scheduling and to the safety-net mitigation plan, as described in more detail below. The Midwest ISO proposes an effective date of April 1, 2005.

II. Notice, Interventions and Protests

4. Notice of the Midwest ISO's filing was published in the *Federal Register*, 70 Fed. Reg. 73,225 (2005), with interventions and protests due on or before December 14, 2005. The Midwest Transmission-Dependent Utilities (Midwest TDUs)³ filed a timely protest. Cinergy Services, Inc., on behalf of its franchised public utility affiliates, Cincinnati Gas & Electric Company, PSI Energy, Inc., and Union Light, Heat and Power Company, (Cinergy) and the Midwest ISO filed answers.

III. Discussion

A. Procedural Matters

5. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of Cinergy and the Midwest ISO because they have provided information that assisted us in our decision-making process.

³ Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas and Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, Upper Peninsula Transmission Dependent Utilities, and Wisconsin Public Power Inc.

B. Analysis**1. Definition of System Purchase Contracts**

6. The October 24 Order required that the Midwest ISO revise the definition of "system purchase contracts" in its TEMT to make clear that Manitoba Hydro's contractual relationships with United States entities through system participation power sale agreements are excluded. In the October 24 Order, the Commission stated that it is possible that using the undefined term "system purchase contracts" could extend the seller's obligation to hold FTRs and pay congestion costs to Manitoba Hydro's unique system participation power sale agreements. Therefore, the Commission directed the Midwest ISO to make a compliance filing that defines the term "system purchase contracts" and capitalizes the term throughout the TEMT, so that it will be clear that allowance is made for such contracts.⁴

7. To comply with the October 24 Order, the Midwest ISO proposes to add a definition for system purchase contracts to the TEMT, in section 1.298a of Module A, to read:

Agreements for the purchase of Energy that do not specify the Generation Resource(s) that shall supply such Energy: provided, however, that this term does not include agreements with Manitoba Hydro involving the supply of Energy from Generation Resources in Canada up to or at the U.S. border.

The Midwest ISO made corresponding changes to the Table of Contents and capitalized one other occurrence of the term in the TEMT.

Protest and Answers

8. The Midwest TDUs believe that the Midwest ISO's proposed definition could be read to exclude the very types of sales that were intended to be encompassed within the term. The Midwest TDUs state that the Commission ruled, in an order dated November 8, 2004,⁵ that sellers of system power must be responsible for obtaining FTRs and bearing congestion costs associated with their provision of service under system-power sale and purchase contracts. A key element of the Commission's reasoning, according to the Midwest TDUs, was that a buyer under a system purchase contract cannot effectively hedge its congestion risks because "it does not control the supply resources designated as points of

⁴ October 24 Order, 113 FERC ¶ 61,083 at P 12.

⁵ *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,157 at P161-66 (2004) (November 8 Order).

receipt.”⁶ The Midwest TDUs believe that the definition of system purchase contracts proposed by the Midwest ISO could be claimed to exclude just such agreements. The Midwest TDUs claim that a seller attempting to avoid the obligation to obtain FTRs and bear the congestion risks associated with its system sales might argue that its contracts are not encompassed by the Midwest ISO’s definition, because its contracts do “specify the Generation Resource(s) that shall supply such Energy.” While such a reading of the provision would be counter to the Commission’s intent, and presumably the Midwest ISO’s intent as well, the Midwest TDUs maintain that litigation to resolve the issue would take time and resources. Since the prospect of such an argument by sellers is foreseeable, the Midwest TDUs propose that the Commission should require that the TEMT section 1.298a definition be changed to:

Agreements for the purchase of Energy that will be supplied from any or all of the owned or controlled generation and/or purchased-power assets of the seller, without identifying which Generation Resources will supply the Energy at any particular time....

9. In its answer, the Midwest ISO confirms that the proposed definition of system purchase contracts was not intended to exclude agreements that describe a set, group or pool of generation resources from which the seller can choose the specific generation resource that will provide power to meet demand on a periodic (*i.e.*, hour-to-hour) basis. The Midwest ISO agrees that such agreements are also in the nature of system purchase contracts. Accordingly, the Midwest ISO is willing to clarify the definition of system purchase contracts as follows:

1.298a System Purchase Contracts: Agreements for the purchase of Energy that do not specify the Generation Resource(s) that the seller shall select to supply such Energy at any particular time; provided, however, that such agreements may identify the group of Generation Resources from which the seller may make its selection; provided, further, that this term does not include agreements with Manitoba Hydro involving the supply of Energy from Generation Resources in Canada up to or at the U.S. border.

Thus, the Midwest ISO requests the Commission’s authorization of this further change to the definition of system purchase contracts, which will further clarify the definition, while remaining compliant with the October 24 Order’s directive to exclude Manitoba Hydro’s system participation power sale agreements from the scope of system purchase contracts.

⁶ *Id.* at P 165.

10. Cinergy believes that the Midwest TDUs' proposed definition omits an important point. In the November 8 Order, on which the Midwest TDUs rely, Cinergy states that the Commission clearly stated its preference, in the Midwest ISO, for negotiated arrangements as to assignment of FTRs.⁷ However, Cinergy believes that the Midwest TDUs' proposed definition of system purchase contracts fails to exclude the types of negotiated arrangements that the Commission specifically encouraged, where parties agree in advance as to who should be responsible for congestion risk. Cinergy therefore asks that the Commission clarify that any proposed definition of system purchase contracts must not interfere with - but rather should expressly exclude - such negotiated arrangements on the assignment of FTRs and taking of congestion risk.

Commission Determination

11. We find the Midwest ISO's answer provides an appropriate definition for system purchase contracts, recognizing the concerns identified by the Midwest TDUs, while still meeting the directions of the October 24 Order for a definition that addresses the Manitoba Hydro agreements.

12. In response to Cinergy's concerns, we clarify that the revised definition is not intended to foreclose negotiations between parties to assign FTRs and determine congestion responsibility. Instead, parties are encouraged to utilize alternative methods since the Commission's requirement for the energy seller to take responsibility for congestion was intended to apply only to the first allocation, and as discussed in the November 8 Order, we encouraged parties to look at other alternatives in future FTR allocations.⁸

2. Monitoring Plan for Inefficient Scheduling

13. In Compliance Order III, the Commission directed the IMM to file a monitoring plan for patterns of inefficient scheduling by holders of the expanded congestion cost hedge, and required the Midwest ISO to file conforming tariff sheets on inefficient scheduling and aggregate day-ahead scheduling. The expanded congestion cost hedge is available for five years to entities located in a Narrow Constrained Area (NCA) designated as such within six months from the start of the market. In approving the expanded congestion cost hedge, the Commission recognized there would be incentives for an entity to nominate the full hedge on all transmission paths, even when it knows it will not use the full amount, since to do so would result in an additional benefit of obtaining revenues from energy sold into the real-

⁷ *Id.* at P 162.

⁸ *Id.* at P 164-66.

time balancing energy market. Thus, a monitoring plan was required to detect patterns of inefficient scheduling.⁹ The October 24 Order required that the monitoring plan must provide a process for the IMM to compare day-ahead schedules and real-time activity to determine inefficient scheduling and required that the Midwest ISO report to the Commission any findings of inefficient scheduling by holders of expanded congestion cost hedges beyond a ten percent threshold.¹⁰

14. In order to comply with the Commission's directives, the Midwest ISO proposes to modify section 53.3.c of Module D of the TEMT to provide that: (1) parties with contracts that include expanded congestion cost hedges must report to the IMM every month the hourly real-time physical schedules or metered injections associated with their owned or contracted generators on the source side of the expanded congestion cost hedge, and hourly metered real-time load on the sink side of the expanded congestion cost hedge; (2) the IMM shall compare the real-time and day-ahead data on imports or injections and load, respectively, for the submitted hedges (such review will determine whether there are deviations that exceed the ten percent threshold, and if so, whether any schedule changes on the sink side of the expanded congestion cost hedge are inconsistent with the physical use of the transmission system to support serving load by the market participant who holds such hedge); (3) the IMM shall verify with the Midwest ISO the accuracy of the data submitted by the monitored parties; and (4) the Midwest ISO shall report to the Commission on a quarterly basis any of the IMM's findings of inefficient scheduling by holders of expanded congestion cost hedges beyond the ten percent threshold.

15. Additionally, the Midwest ISO proposes a corresponding change in section 53.3.c(a), by changing the word "economic" to "uneconomic." This change, asserts the Midwest ISO, was necessary to ensure consistency with the additional revisions required by the Commission and to ensure the appropriate standard is applied by the IMM in monitoring for inefficient scheduling by parties with expanded congestion cost hedge protection.

16. Finally, the Commission noted in the October 24 Order¹¹ that proposed section 53.3.c(c) provided in the original Midwest ISO filing of June 14, 2005 would determine over-scheduling was occurring when it, in fact, had not occurred, since the definition of over-scheduling compared day-ahead imports to economic generation rather than to actual

⁹ *Midwest Independent Transmission System Operator, Inc., order on reh'g*, 111 FERC ¶ 61,043 (2005), *reh'g denied*, 112 FERC ¶ 61,086 at P 91-92 (2005).

¹⁰ October 24 Order, 113 FERC ¶ 61,083 at P 37.

¹¹ *Id.* at P 36.

real-time generation. The Commission found that the term economic generation is problematic since it is a theoretical estimate of available generation, rather than a measure of actual real-time generation, and required the Midwest ISO to revise this section accordingly.

Commission Determination

17. We find that the proposed revisions to section 53.3.c meet the requirements of the October 24 Order except that the revised tariff sheets proposed by the Midwest ISO in the November 23 filing retain reference to economic generation and imports, and therefore retain the deficiencies of the original filing. Therefore, we require the following revisions to section 53.3.c(c), to be submitted in a compliance filing:

c) exceed the quantity of ~~economic~~ imports needed to serve the Load of the Market Participant. The last category of conduct shall be defined as instances when the day-ahead scheduled import is greater than one hundred ten percent (110%) of the actual Load minus the Market Participant's ~~economic~~ metered real-time generation inside the NCA (the "10% threshold").

3. Safety-Net Mitigation Plan

18. In the Order on Rehearing I, the Commission required that the IMM develop and file a safety-net plan for instituting mitigation if a pattern of behavior develops in the day-ahead market in which mitigation is repeatedly needed but cannot be applied due to the lag. The IMM was directed to file a plan and associated timeline under which it would resolve this problem for the longer term by instituting automated or expedited manual mitigation in the market.¹² The October 24 Order accepted the IMM's clarification that mitigation will be applied to all units under common ownership or control in the Broad Constrained Area, but the Commission also noted that this applies to those within the same NCA. The Commission found the wording in the TEMT to be insufficiently clear, as it may be read that every resource associated with that supplier would be mitigated if any one of the resources failed the conduct test. Therefore, the Commission directed the Midwest ISO to make a number of clarifying revisions to section 65 of Module D.¹³

¹² *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,157 at P 259 (2004).

¹³ October 24 Order, 113 FERC ¶ 61,083 at P 25-26.

19. In response, the Midwest ISO proposes to revise section 65 of Module D in the TEMT, by making make the modifications to section 65.2.2.f.ii, section 65.2.2.f.iii, section 65.2.2.f.iv, and section 65.2.2.f.v.

Commission Determination

20. We accept the Midwest ISO's proposed revisions to section 65.2.2 of the TEMT since they comply with the October 24 Order.

The Commission orders:

The proposed tariff revisions filed by the Midwest ISO are hereby conditionally accepted, and the Midwest ISO is hereby directed to submit a compliance filing, as discussed in the body of the order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.